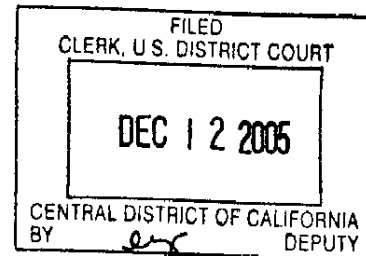


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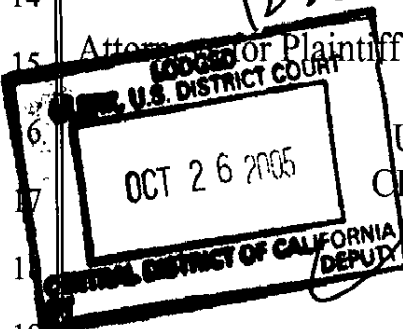
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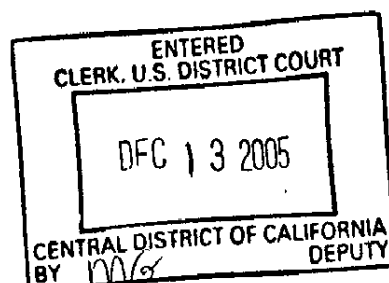


UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA)
Plaintiff,)
v.)
AEROJET-GENERAL)
CORPORATION and GENCORP,)
INC.,)
Defendants.)

Case No. CV05-7516-PA (PWJx) CAS(R2x)

CONSENT DECREE



THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

8

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XX. FINAL JUDGMENT 26

SCANNED

1 **I. BACKGROUND**

2 A. Pursuant to Section 105 of the Comprehensive Environmental Response,
3 Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, the United
4 States Environmental Protection Agency ("EPA") placed the San Gabriel Valley
5 Superfund Sites Areas 1-4 in Los Angeles County, California, including the
6 Baldwin Park Operable Unit (Area 2) (the "BPOU Area"), on the National
7 Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the
8 Federal Register on May 8, 1984, 49 Fed. Reg. 19,480.

9 B. On March 31, 1994, EPA executed a Record of Decision ("ROD")
10 setting forth EPA's decision on the interim remedial action to be implemented at
11 the BPOU Area. In May 1999, EPA issued an Explanation of Significant
12 Differences ("ESD") relating to the ROD.

13 C. On February 28, 2002, EPA issued an amended Unilateral
14 Administrative Order ("UAO") for Remedial Design and Remedial Action
15 ("RD/RA") at the BPOU Area to Aerojet-General Corporation ("Aerojet") and
16 GenCorp, Inc. ("Settling Defendants") as well as other Potentially Responsible
17 Parties. A copy of the UAO and the Statement of Work attached to and included
18 as part of the UAO is attached to this Consent Decree, for reference only, as
19 Appendix A.

20 D. On March 29, 2002, Aerojet, together with Azusa Land Reclamation
21 Co., Inc., Fairchild Holding Corp., Hartwell Corporation, Huffy Corporation, Oil
22 & Solvent Process Company, Reichhold, Inc., and Wynn Oil Company, now
23 known as Winco Enterprises Inc. (collectively known as the "Cooperating
24 Respondents"), entered into the BPOU Project Agreement with local Water
25 Entities, certain of which had sued the Cooperating Respondents and other PRPs
26 pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), and other provisions of
27 law. The BPOU Project Agreement provides for the implementation of the BPOU
28 Area interim remedy as a joint cleanup and water supply project. The BPOU

1 Project Agreement makes the Cooperating Respondents responsible for funding
2 the design, construction, installation, operation, maintenance, and management of
3 the groundwater extraction, treatment, distribution, and monitoring facilities
4 (defined in the BPOU Project Agreement as "Subprojects") to the extent needed as
5 part of the joint cleanup and water supply project, and the Water Entities
6 responsible for the design, construction, installation, operation, maintenance, and
7 management of the Subprojects. EPA has approved four of the BPOU Subprojects
8 as satisfying the Cooperating Respondents' obligations under the UAO.

9 E. In performing response actions at the BPOU Area, the United States has
10 incurred and will continue to incur response costs at or in connection with the
11 BPOU Area.

12 F. The United States, on behalf of the Administrator of EPA, filed a
13 complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607,
14 seeking reimbursement of response costs incurred or to be incurred for response
15 actions taken at or in connection with the release or threatened release of
16 hazardous substances at the BPOU Area, together with accrued interest.

17 G. Settling Defendants do not admit any liability to Plaintiff arising out of
18 the transactions or occurrences alleged in the complaint, nor do they acknowledge
19 that the release or threatened release of hazardous substance(s) at or from the
20 BPOU Area constitutes an imminent or substantial endangerment to the public
21 health or welfare or the environment. Except as otherwise provided in the Federal
22 Rules of Evidence, Settling Defendants' participation in this settlement process
23 and entry into this Consent Decree shall not be considered as an admission of
24 liability for any purpose.

25 H. The purpose of this Consent Decree is to provide for Settling
26 Defendants' payment of a share of Past Response Costs, and for their continued
27 compensation of the United States for Oversight Costs. Except as otherwise
28 settled by this Consent Decree, this Decree does not address issues with respect to

1 Settling Defendants' obligations or continuing performance under the UAO. The
2 United States and Settling Defendants desire to resolve Settling Defendants'
3 alleged civil liability for Past Response Costs and Oversight Costs, as those terms
4 are defined herein, without litigation and without admission or adjudication of any
5 issue of fact or law.

6 I. The United States and Settling Defendants agree, and this Court by
7 entering this Consent Decree finds, that this Consent Decree has been negotiated
8 by the Parties in good faith, that settlement of this matter will avoid prolonged and
9 complicated litigation between the Parties, and that this Consent Decree is fair,
10 reasonable, and in the public interest.

11 THEREFORE, with the consent of the Parties to this Decree, it is
12 ORDERED, ADJUDGED, AND DECREED:

13 **II. JURISDICTION**

14 1. This Court has jurisdiction over the subject matter of this action pursuant
15 to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has
16 personal jurisdiction over Settling Defendants. Solely for the purposes of this
17 Consent Decree and the underlying complaint, Settling Defendants waive all
18 objections and defenses that they may have to jurisdiction of the Court or to venue
19 in this District. Settling Defendants shall not challenge the terms of this Consent
20 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

21 **III. PARTIES BOUND**

22 2. This Consent Decree is binding upon the United States, and upon
23 Settling Defendants and their successors and assigns. Any change in ownership or
24 corporate or other legal status, including, but not limited to, any transfer of assets
25 or real or personal property, shall in no way alter the status or responsibilities of
26 Settling Defendants under this Consent Decree.

27 **IV. DEFINITIONS**

28 3. Unless otherwise expressly provided herein, terms used in this Consent

1 Decree that are defined in CERCLA or in regulations promulgated under
2 CERCLA shall have the meanings assigned to them in CERCLA or in such
3 regulations. Whenever terms listed below are used in this Consent Decree, the
4 following definitions shall apply:

5 a. "Baldwin Park 09M5 Special Account" shall mean one of the
6 special accounts established for the BPOU Area by EPA pursuant to Section
7 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

8 b. "BPOU Area" shall mean the Baldwin Park Operable Unit (Area
9 2) of the San Gabriel Valley Superfund Sites, Areas 1-4, in and near the cities of
10 Azusa, Irwindale, and Baldwin Park, in Los Angeles County, California. The
11 BPOU Area is depicted generally on the map attached as Appendix B.

12 c. "BPOU Project Agreement" shall mean the agreement dated
13 March 29, 2002, and declared effective as of May 9, 2002, by and between the
14 "Water Entities" and the "Cooperating Respondents."

15 d. "CERCLA" shall mean the Comprehensive Environmental
16 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.
17 § 9601, *et seq.*

18 e. "Consent Decree" shall mean this Consent Decree only. The
19 appendices attached hereto are included for reference only and shall not constitute
20 a part of this Consent Decree.

21 f. "Cooperating Respondents" shall mean Aerojet-General
22 Corporation; Azusa Land Reclamation Co., Inc.; Fairchild Holding Corp.;
23 Hartwell Corporation; Huffy Corporation; Oil & Solvent Process Company;
24 Reichhold, Inc.; and Wynn Oil Company, now known as Winco Enterprises Inc..

25 g. "Day" shall mean a calendar day. In computing any period of time
26 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or
27 federal or California State holiday, the period shall run until the close of business
28 of the next working day.

1 h. "Defined BPOU Project Work" shall mean various BPOU
2 planning, reporting, design, construction, operation and maintenance, monitoring,
3 and evaluation activities completed before May 8, 2017, to implement planning or
4 design documents approved by EPA before May 31, 2005. Defined BPOU Project
5 Work shall include:

6 (1) Design and construction of the following four Subprojects:

7 (i) the La Puente Valley County Water District, San Gabriel
8 Valley Water Company B-6, and Valley County Water District
9 Subprojects as documented in Remedial Action Reports
10 completed for the three Subprojects. The three Remedial
11 Action Reports are dated September 2003, September 2004,
12 and March 2005, and were approved by EPA on September 30,
13 2003, September 30, 2004, and March 31, 2005, respectively;
14 and

15 (ii) the San Gabriel Valley Water Company B-5 ("B-5")
16 Subproject. EPA approved the design for the B-5 Subproject in
17 a letter dated September 29, 2004. Construction is expected to
18 continue into 2006;

19 (2) Operation and maintenance activities related to the four
20 Subprojects in subparagraph (1) until May 8, 2017;

21 (3) Preparation of, and activities implemented to comply with, the
22 January 30, 2004 Revised Final Performance Standards Evaluation
23 Plan submitted in accordance with the EPA approval letter dated
24 December 10, 2003.

25 i. "DOJ" shall mean the United States Department of Justice and any
26 of its successor departments, agencies, or instrumentalities.

27 j. "Effective Date" shall be the effective date of this Consent Decree
28 as provided in Paragraph 33.

1 k. "EPA" shall mean the United States Environmental Protection
2 Agency and any of its successor departments, agencies or instrumentalities.

3 l. "EPA Hazardous Substance Superfund" shall mean the Hazardous
4 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

5 m. "Explanation of Significant Differences" or "ESD" shall mean the
6 Explanation of Significant Differences relating to the BPOU Area issued by EPA
7 in May 1999. The ESD is attached as Appendix D.

8 n. "Interest" shall mean interest at the rate specified for interest on
9 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.
10 § 9507, compounded annually on October 1 of each year, in accordance with 42
11 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the
12 time the interest accrues. The rate of interest is subject to change on October 1 of
13 each year.

14 o. "National Contingency Plan" or "NCP" shall mean the National
15 Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant
16 to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and
17 any amendments thereto.

18 p. "Oversight Costs" shall mean all costs, including, but not limited
19 to, direct and indirect costs, that are not inconsistent with the NCP and that are
20 incurred by the United States at or in connection with the BPOU Area on or after
21 July 1, 2004, until and including May 8, 2017 (the remaining term of the BPOU
22 Project Agreement) in: reviewing, verifying or developing the plans, reports, and
23 other documents submitted or conducted pursuant to the UAO, this Consent
24 Decree, or the BPOU Project Agreement; reviewing or verifying the Work
25 conducted pursuant to the UAO or the BPOU Project Agreement; conducting
26 response activities pursuant to Section XIV (EPA Review of Submissions) of the
27 UAO, except for Paragraph 87(d) of the amended UAO issued on February 28,
28 2002, as it relates to EPA's performance of all or part of the response action;

1 performing periodic remedial action reviews under Section XI (EPA Periodic
2 Review) of the UAO or Section 121 of CERCLA, 42 U.S.C. § 9621; or
3 implementing, overseeing, or enforcing this Consent Decree against Settling
4 Defendants, including, but not limited to, payroll costs, contractor costs, travel
5 costs, laboratory costs, costs of attorney time, costs of obtaining access to the
6 BPOU Area, and Interest on all such costs accrued from the date payment of a
7 specific amount is due under this Consent Decree.

8 q. "Paragraph" shall mean a portion of this Consent Decree identified
9 by an Arabic numeral or an upper or lower case letter.

10 r. "Parties" shall mean the United States and Settling Defendants.

11 s. "Past Response Costs" shall mean all costs, including, but not
12 limited to, direct and indirect costs, that EPA or DOJ on behalf of EPA has paid or
13 incurred at or in connection with the BPOU Area through June 30, 2004, including
14 all basin-wide costs to the extent that such costs are allocated to the BPOU, plus
15 accrued Interest on all such costs through such date.

16 t. "Plaintiff" shall mean the United States.

17 u. "ROD" shall mean the EPA Record of Decision and all
18 attachments thereto relating to the interim remedy for the BPOU Area, which was
19 signed by the delegate of the Regional Administrator, EPA Region 9 on March 31,
20 1994. The ROD is attached as Appendix C.

21 v. "Section" shall mean a portion of this Consent Decree identified
22 by a Roman numeral.

23 w. "Settling Defendants" shall mean Aerojet-General Corporation
24 and GenCorp, Inc, and their successors. For purposes of Paragraphs 16, 17, 18,
25 and 21, Settling Defendants shall also mean:

26 (i) the predecessors of such entities;

27 (ii) the subsidiaries of such entities; and

28 (iii) any shareholder, officer, director, or employee, acting in their

1 capacities as such, of Aerojet, GenCorp or their predecessors or
2 subsidiaries;
3 but only to the extent that any such person or entity within categories (i), (ii) or
4 (iii) above has no independent liability for the BPOU Area other than the liability
5 derived from that person's or entity's relationship to, or affiliation with, Aerojet or
6 GenCorp, as specified.

7 x. "Site" shall mean the San Gabriel Valley Superfund Sites, Areas 1-
8 4, in Los Angeles County, California.

9 y. "Site 0927 San Gabriel Valley/Baldwin Park Special Account"
10 shall mean one of the special accounts established for the BPOU Area by EPA
11 pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

12 z. "Unilateral Administrative Order" or "UAO" shall mean EPA's
13 June 30, 2000 Unilateral Administrative Order No. 2000-13 (as amended on
14 February 28, 2002), including the Statement of Work attached thereto, issued
15 under Section 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of RCRA, 42
16 U.S.C. § 6973, relating to the BPOU Area. The UAO is attached as Appendix A.

17 aa. "United States" shall mean the United States of America,
18 including its departments, agencies and instrumentalities.

19 bb. "Water Entities" shall mean the Main San Gabriel Basin
20 Watermaster, the San Gabriel Basin Water Quality Authority, La Puente Valley
21 County Water District, San Gabriel Valley Water Company, Suburban Water
22 Systems, California Domestic Water Company, and Valley County Water District,
23 and, only as to La Puente Valley County Water District, San Gabriel Valley Water
24 Company, Suburban Water Systems, California Domestic Water Company, and
25 Valley County Water District, their respective successors.

26 cc. "Work" shall mean all activities required to be performed to
27 implement the ROD, as supplemented by the ESD, at or in connection with the
28 BPOU Area.

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1 shall make all payments within 60 days of Settling Defendants' receipt of each bill
2 requiring payment, except as otherwise provided in Paragraph 10. EPA may, in its
3 sole discretion, extend the time period for payment. Settling Defendants shall
4 make all payments required by this Paragraph in the form of a certified or cashier's
5 check or checks made payable to "EPA Hazardous Substance Superfund" or an
6 EFT to the EPA Hazardous Substance Superfund account in accordance with EFT
7 instructions to be provided to Settling Defendants by EPA. The payments shall
8 reference the name and address of the party making payment, EPA Region 9 and
9 Site Spill Number 09M5, DOJ case number 90-11-2-354/18, and the civil action
10 number. Settling Defendants shall forward the certified or cashier's check(s) to:

11 EPA - Cincinnati Accounting Operations
12 Attn: Region 9 Receivables
13 P.O. Box 371099M
Pittsburgh, PA 15251

14 and shall send copies of the check(s) or notice of the EFT payment to DOJ, EPA,
15 and the Regional Financial Management Officer, in accordance with Section XIV
16 (Notices and Submissions). The total amount to be paid pursuant to Paragraph 8
17 shall be deposited in the Baldwin Park 09M5 Special Account within the EPA
18 Hazardous Substance Superfund to be retained and used to conduct or finance
19 response actions at or in connection with the BPOU Area, or to be transferred by
20 EPA to the EPA Hazardous Substance Superfund.

21 9. Except as otherwise settled by this Consent Decree, the Parties agree that
22 this Consent Decree does not address Settling Defendants' obligations or
23 continued performance under the UAO.

24 10. Dispute Resolution for Oversight Costs.

25 a. Standard. Settling Defendants may contest payment of any
26 Oversight Costs billed by the United States if they determine that the United States
27 has made an accounting error or has included costs outside the scope of this
28 Consent Decree, or if they allege that a cost item that is included represents costs

1 that are inconsistent with the NCP.

2 b. Procedures. The dispute resolution procedures set forth in
3 Paragraph 10 shall be the exclusive mechanism for resolving disputes regarding
4 the Settling Defendants' obligation to reimburse the United States for its Oversight
5 Costs.

6 c. Dispute Resolution. The dispute resolution mechanism described
7 in Paragraph 10 is only available if Settling Defendants comply with the following
8 conditions:

9 (1) Notice. Any objection to the payment of Oversight Costs shall be
10 made in writing within 60 days of receipt of the bill and accompanying accounting
11 of costs and must be sent to the United States in accordance with Section XIV
12 (Notices and Submissions). EPA may, in its sole discretion, extend the time
13 period for payment. Any such objection (hereinafter referred to as the "Notice of
14 Objection") shall specifically identify the contested Oversight Costs and the basis
15 for objection.

16 (2) Payment of Undisputed Amounts. In the event of an objection to
17 some but not all Oversight Costs, Settling Defendants shall, within the 60-day
18 period, pay all uncontested Oversight Costs to the United States in the manner
19 described in Paragraph 8.

20 (3) Escrow for Disputed Amounts. Within 60 days of receipt of a bill
21 for Oversight Costs that are disputed, Settling Defendants shall establish an
22 interest-bearing escrow account in a federally-insured bank and remit to that
23 escrow account funds equivalent to the amount of the contested Oversight Costs.
24 Settling Defendants shall send to the United States, as provided in Section XIV
25 (Notices and Submissions), a copy of the correspondence that establishes and
26 funds the escrow account, including, but not limited to, information containing the
27 identity of the bank and bank account under which the escrow account is
28 established as well as a bank statement showing the initial balance of the escrow

1 account.

2 d. Informal Dispute Resolution. Any dispute with respect to
3 Oversight Costs shall in the first instance be the subject of informal negotiations
4 between the United States and Settling Defendants.

5 e. Formal Dispute Resolution.

6 (1) Initiation. If the dispute is not resolved by informal dispute
7 resolution, either party may commence formal dispute resolution by sending a
8 Notice of Formal Dispute Resolution to the other party to the dispute. The Notice
9 of Formal Dispute Resolution shall be accompanied by a written Statement of
10 Position by the party who serves the Notice, stating the basis of that party's
11 position and citing all factual data, analysis, opinion or other information on which
12 that party relies to support its position. The opposing party shall have 30 days in
13 which to serve a Response setting forth the same information supporting its
14 position.

15 (2) Administrative Record and Decision. EPA shall maintain an
16 administrative record of any dispute as to Oversight Costs for which formal
17 dispute resolution has been initiated. The administrative record shall include the
18 disputed bill and all cost documentation sent by EPA to the Settling Defendants,
19 the Notice of Objection served by Settling Defendants, the Notice of Formal
20 Dispute Resolution and accompanying Statement of Position, the opposing party's
21 Response, and any other documents or information sent to EPA by Settling
22 Defendants for inclusion in the record or relied on by EPA in reaching an
23 administrative resolution of the dispute. The Director of the Superfund Division,
24 EPA Region IX, will issue a final administrative decision determining whether the
25 disputed Oversight Costs, or any part of them, shall be disallowed as inconsistent
26 with the NCP, as the result of an accounting error, or as costs outside the scope of
27 this Consent Decree.

28 (3) Judicial Appeal. Settling Defendants may appeal EPA's

1 administrative decision made pursuant to the preceding subparagraph to this Court
2 within 30 days of their receipt of EPA's decision. The Court's review of EPA's
3 decision shall be limited to EPA's administrative record except to the extent that
4 Settling Defendants establish that supplemental materials may be considered by
5 the Court under CERCLA and applicable principles of administrative law.
6 Judicial review of any dispute under this subparagraph shall be governed by
7 CERCLA and applicable principles of administrative law.

8 f. Payment Following Dispute Resolution. Payments determined to
9 be owing to the United States following dispute resolution shall be paid from the
10 escrow account (including accrued Interest on the amounts owed) to the United
11 States in the manner described in Paragraph 8, within 10 days after receipt of the
12 Court's decision or, if EPA's final administrative decision is not timely appealed,
13 within 40 days after EPA's decision. To the extent that any amounts are
14 determined not to be owed, Settling Defendants shall be disbursed the remainder
15 of the escrow account.

16 **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

17 11. Interest on Late Payments. If Settling Defendants fail to make any
18 payment under Paragraph 4 (Payment of Past Response Costs to EPA) or
19 Paragraph 8 (Payment of Oversight Costs to EPA), Interest shall accrue on the
20 unpaid balance from the due date through the date of payment.

21 12. Stipulated Penalty.

22 a. If any amounts due under Paragraph 4 are not paid by the required
23 date, Settling Defendants shall be in violation of this Consent Decree and shall pay
24 to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph
25 11, \$1,000 per day that such payment is late.

26 b. If any amounts due under Paragraph 8 are not either paid by the
27 required date or paid into escrow in accordance with Paragraph 10(c)(3), Settling
28 Defendants shall pay to EPA, in addition to the Interest required in Paragraph 11,

the following stipulated penalties, which shall accrue per violation per day:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 st through 30 th day
\$1,000	31 st day and beyond

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c. Stipulated penalties are due and payable within 30 days after the date of the demand by EPA for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, EPA Region 9 and Site Spill Number 09M5, DOJ Case Number 90-11-2-354/18, and the civil action number, and shall be sent to:

EPA - Cincinnati Accounting Operations
Attn: Region 9 Receivables
P.O. Box 371099M
Pittsburgh, PA 15251

d. At the time of payment of any stipulated penalties to the United States, Settling Defendants shall send copies of check(s), and any accompanying transmittal letter(s), to DOJ, EPA, and the Regional Financial Management Officer as provided in Section XIV (Notices and Submissions) of this Consent Decree. Such notice shall reference the EPA Region and Site Spill Number 09M5, DOJ Case Number 90-11-2-354/18, and the civil action number.

e. Stipulated penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate

1 violations of this Consent Decree.

2 13. If the United States brings an action to enforce this Consent
3 Decree, Settling Defendants shall reimburse the United States for all costs of
4 such action, including, but not limited to, costs of attorney time.

5 14. Payments made under this Section shall be in addition to any other
6 remedies or sanctions available to Plaintiff by virtue of Settling Defendants'
7 failure to comply with the requirements of this Consent Decree.

8 15. Notwithstanding any other provision of this Section, the United
9 States may, in its unreviewable discretion, waive payment of any portion of
10 the stipulated penalties that have accrued to the United States pursuant to
11 this Consent Decree. Payment of stipulated penalties shall not excuse
12 Settling Defendants from payment as required by Section V or from
13 performance of any other requirements of this Consent Decree.

14 **VII. COVENANTS NOT TO SUE BY PLAINTIFF**

15 16. Covenants Not to Sue. Except as specifically provided in Section
16 VIII (Reservations of Rights by Plaintiff), the United States covenants not to
17 sue or to take administrative action against Settling Defendants pursuant to
18 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response
19 Costs or Oversight Costs as defined in this Consent Decree. These covenants
20 not to sue or to take administrative action (1) are conditioned upon the
21 satisfactory performance by Settling Defendants of their obligations under
22 this Consent Decree, (2) do not extend to any other person, and (3) shall take
23 effect upon receipt by EPA of all payments required by Paragraph 4 and any
24 related amount due under Section VI (Failure to Comply with Consent
25 Decree), Paragraphs 11 and 12, on account of late payment of Past Response
26 Costs.

27 **VIII. RESERVATIONS OF RIGHTS BY PLAINTIFF**

28 17. The United States reserves, and this Consent Decree is without

prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenants Not to Sue in Paragraph 16.

Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definitions of Past Response Costs or Oversight Costs;
- c. liability for injunctive relief, any administrative action (except to the extent settled in this Consent Decree), fines, and/or punitive damages under Sections 106 or 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606, 9607(c)(3);
- d. liability for any and all response costs incurred by the United States (that are not within the definitions of Past Response Costs or Oversight Costs) that are related to Settling Defendants' violation of, or failure or refusal to comply with, the UAO;
- e. liability for additional operable units at the Site, or a final response action, including, but not limited to, the final Record of Decision for the BPOU Area;
- f. criminal liability; and
- g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANTS NOT TO SUE AND RESERVATION OF RIGHTS BY SETTLING DEFENDANTS

18. Covenants Not to Sue; Reservation of Rights.

- a. Subject to Paragraph 18.d. below, Settling Defendants covenant not to sue and agree not to assert any claims or causes of action

1 against the United States, or its contractors or employees, with respect to Past
2 Response Costs, Oversight Costs, or this Consent Decree, including, but not
3 limited to:

4 i. any direct or indirect claim for reimbursement from the
5 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112,
6 or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or
7 any other provision of law;

8 ii. any claim for Past Response Costs or Oversight Costs
9 arising out of the response actions at the Site for which the Past Response
10 Costs or Oversight Costs were incurred, including any claim under the United
11 States Constitution, the Constitution of the State of California, the Tucker
12 Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as
13 amended, or at common law; or

14 iii. any claim against the United States pursuant to
15 Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, relating to Past
16 Response Costs or Oversight Costs.

17 b. With respect to the Defined BPOU Project Work, Settling
18 Defendants covenant not to sue and agree not to assert any direct or indirect
19 claim for reimbursement from the Hazardous Substance Superfund based on
20 Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.
21 §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law.

22 c. Except as provided in Paragraph 18.b., Settling Defendants
23 reserve the right to sue or assert claims or defenses as to Work, including any
24 Defined BPOU Project Work, and the United States reserves all defenses to
25 such claims.

26 d. Settling Defendants reserve, and these covenants not to sue
27 and this Consent Decree are without prejudice to, any claims under federal
28 law, under or on the basis of any contract with the United States, that Settling

1 Defendants might assert against the United States to recover costs, incurred
2 under this Consent Decree or otherwise, at or associated with the BPOU Area
3 The United States reserves all defenses to any such claims.

4 19. Nothing in this Consent Decree shall be deemed to constitute
5 approval or preauthorization of a claim within the meaning of Section 111 of
6 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

7 **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

8 20. Except as provided in Paragraph 2 with respect to successors and
9 assigns and as provided in the definition of Settling Defendants with respect to
10 Paragraphs 16, 17, 18, and 21, nothing in this Consent Decree shall be
11 construed to create any rights in, or grant any cause of action to, any person
12 not a Party to this Consent Decree. The Parties expressly reserve any and all
13 rights (including, but not limited to, any right to contribution), defenses,
14 claims, demands, and causes of action that they may have with respect to any
15 matter, transaction, or occurrence relating in any way to the Site against any
16 person not a Party hereto.

17 21. The Parties agree, and by entering this Consent Decree this Court
18 finds, that Settling Defendants are entitled, as of the date of entry of this
19 Consent Decree, to protection from contribution actions or claims as provided
20 by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters
21 addressed" in this Consent Decree. The "matters addressed" in this Consent
22 Decree are Past Response Costs and Oversight Costs, as defined in this
23 Consent Decree.

24 22. Each Settling Defendant agrees that, with respect to any suit or
25 claim for contribution brought by it for matters related to this Consent Decree,
26 it will notify EPA and DOJ in writing no later than 60 days prior to the
27 initiation of such suit or claim. Each Settling Defendant also agrees that, with
28 respect to any suit or claim for contribution brought against it for matters

1 related to this Consent Decree, it will notify EPA and DOJ in writing within
2 10 days of service of the complaint or claim upon it. In addition, Settling
3 Defendants shall notify EPA and DOJ within 10 days of service or receipt of
4 any Motion for Summary Judgment, and within 10 days of receipt of any order
5 from a court setting a case for trial, for matters related to this Consent Decree.

6 23. In any subsequent administrative or judicial proceeding initiated by
7 the United States for injunctive relief, recovery of response costs, or other
8 relief relating to the Site, Settling Defendants shall not assert, and may not
9 maintain, any defense or claim based upon the principles of waiver, *res*
10 *judicata*, collateral estoppel, issue preclusion, claim-splitting, or other
11 defenses based upon any contention that the claims raised by the United States
12 in the subsequent proceeding were or should have been brought in the instant
13 case; provided, however, that nothing in this Paragraph affects the
14 enforceability of the Covenants Not to Sue by Plaintiff set forth in Section VII.

15 **XI. ACCESS**

16 24. If the Site, or any other property where access is needed to
17 implement response activities at the Site, is owned or controlled by the
18 Settling Defendants, Settling Defendants shall, commencing on the date of
19 lodging of this Consent Decree, provide the United States and its
20 representatives, including EPA and contractors, with access at all reasonable
21 times to the Site, or to such other property, for the purpose of conducting any
22 response activity related to the Site, including, but not limited to, the following
23 activities:

- 24 1. Monitoring, investigation, removal, remedial or other
25 activities at the Site;
- 26 2. Verifying any data or information submitted to the
27 United States;
- 28 3. Conducting investigations relating to contamination at

1 or near the Site;

2 4. Obtaining samples;

3 5. Assessing the need for, planning, or implementing
4 response actions at or near the Site;

5 6. Inspecting and copying records, operating logs,
6 contracts, or other documents maintained or generated by Settling Defendants
7 or their agents, consistent with Section XII (Access to Information); and

8 7. Assessing Settling Defendants' compliance with this
9 Agreement.

10 25. Notwithstanding any provision of this Agreement, EPA retains all
11 of its access authorities and rights, as well as all of its rights to require
12 land/water use restrictions, including enforcement authorities related thereto,
13 under CERCLA, RCRA, and any other applicable statutes or regulations.

14 **XII. ACCESS TO INFORMATION**

15 26. Until May 8, 2017, Settling Defendants shall provide to EPA, upon
16 request, copies of all records, reports, or information (hereinafter referred to as
17 "records") within their possession or control or that of their contractors or
18 agents relating to activities at the Site or to the implementation of this Consent
19 Decree, including, but not limited to, sampling, analysis, chain of custody
20 records, manifests, trucking logs, receipts, reports, sample traffic routing,
21 correspondence, or other documents or information related to the Site.

22 27. **Confidential Business Information and Privileged Documents.**

23 a. Settling Defendants may assert business confidentiality claims
24 covering part or all of the records submitted to Plaintiff under this Consent
25 Decree to the extent permitted by and in accordance with Section 104(e)(7) of
26 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records
27 determined to be confidential by EPA will be accorded the protection
28 specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality

1 accompanies records when they are submitted to EPA, or if EPA has notified
2 Settling Defendants that the records are not confidential under the standards of
3 Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may
4 be given access to such records without further notice to Settling Defendants.

5 b. Each Settling Defendant may assert that certain records are
6 privileged under the attorney-client privilege or any other privilege recognized
7 by federal law. If a Settling Defendant asserts such a privilege in lieu of
8 providing records, it shall provide Plaintiff with the following: 1) the title of
9 the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*,
10 company or firm), and address of the author of the record; 4) the name and
11 title of each addressee and recipient; 5) a description of the subject of the
12 record; and 6) the privilege asserted. If a claim of privilege applies only to a
13 portion of a record, the record shall be provided to Plaintiff in redacted form to
14 mask the privileged information only. Each Settling Defendant shall retain all
15 records that it claims to be privileged until the United States has had a
16 reasonable opportunity to dispute the privilege claim and any such dispute has
17 been resolved in the Settling Defendant's favor. However, no records created
18 or generated pursuant to the requirements of this or any other settlement with
19 EPA pertaining to the Site shall be withheld on the grounds that they are
20 privileged.

21 28. No claim of business confidentiality shall be made with respect to
22 any information or data within the scope of Section 104(e)(7)(F) of CERCLA,
23 42 U.S.C. § 9604(e)(7)(F), including, but not limited to, all sampling,
24 analytical, monitoring, hydrogeologic, scientific, chemical, or engineering
25 data, or any other documents or information evidencing conditions at or
26 around the Site.

27 **XIII. RETENTION OF RECORDS**

28 29. Until May 8, 2017, Settling Defendants shall preserve and retain all

records now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the document retention period described in the preceding Paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Each Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Each Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

31. Each Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit

1 against it regarding the Site and that it has fully complied with any and all
2 EPA requests for information pursuant to Sections 104(e) and 122(e) of
3 CERCLA, 42 U.S.C. §§ 9604(e), 9622(e), and Section 3007 of RCRA, 42
4 U.S.C. § 6972.

5 **XIV. NOTICES AND SUBMISSIONS**

6 32. Whenever, under the terms of this Consent Decree, notice is
7 required to be given or a document is required to be sent by one party to
8 another, it shall be directed to the individuals at the addresses specified below,
9 unless those individuals or their successors give notice of a change to the other
10 Parties in writing. Written notice as specified herein shall constitute complete
11 satisfaction of any written notice requirement of the Consent Decree with
12 respect to the United States, EPA, DOJ, and Settling Defendants.

13 As to the United States:

14 As to DOJ:

15 Chief, Environmental Enforcement Section
16 Environment and Natural Resources Division
17 U.S. Department of Justice
18 P.O. Box 7611, Ben Franklin Station
19 Washington, D.C. 20044
20 Re: DJ # 90-11-2-354/18

21 and

22 Robert D. Mullaney
23 Trial Attorney
24 Environmental Enforcement Section
25 U.S. Department of Justice
26 301 Howard Street, Suite 1050
27 San Francisco, CA 94105

28 As to EPA:

29 Lewis C. Maldonado, ORC-3
30 Assistant Regional Counsel
31 United States Environmental Protection Agency
32 75 Hawthorne Street
33 San Francisco, CA 94105

34 and

35 Wayne Praskins, SFD-7-3
36 EPA Project Coordinator
37 United States Environmental Protection Agency
38 75 Hawthorne Street
39 San Francisco, CA 94105

1 As to the Regional Financial Management Officer:

2 Joe Schmidt, PMD-5
 3 United States Environmental Protection Agency
 4 75 Hawthorne Street
 5 San Francisco, CA 94105

6 As to the Settling Defendants:

7 As to Aerojet:

8 Scott Goulart
 9 Director, Environmental Restoration Program
 10 P.O. Box 13222
 11 Sacramento, CA 95813-6000
 12 [If Hand-Delivery or Overnight Mail:
 13 Hwy 50 and Aerojet Road
 14 Rancho Cordova, CA 95670]

15 With Copies to:

16 Office of General Counsel
 17 GenCorp Inc.
 18 P.O. Box 537012
 19 Sacramento, CA 95853-7012
 20 [If Hand-Delivery or Overnight Mail:
 21 Hwy 50 and Aerojet Road
 22 Rancho Cordova, CA 95670]

23 Lawrence A. Hobel
 24 Heller Ehrman LLP
 25 333 Bush Street
 26 San Francisco, CA 94104-2878

27 As to GenCorp:

28 GenCorp Inc.
 Office of General Counsel
 P.O. Box 537012
 Sacramento, CA 95853-7012
 [If Hand-Delivery or Overnight Mail:
 Hwy 50 and Aerojet Road
 Rancho Cordova, CA 95670]

With a Copy to:

Lawrence A. Hobel
 Heller Ehrman LLP
 333 Bush Street
 San Francisco, CA 94104-2878

SCANNED

XV. EFFECTIVE DATE

33. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XVI. RETENTION OF JURISDICTION

34. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDICES

35. This Consent Decree constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to this Consent Decree for reference only:

“Appendix A” is a copy of the UAO and the SOW attached to and included as part of the UAO;

“Appendix B” is a map that generally depicts the BPOU Area;

“Appendix C” is a copy of the ROD; and

“Appendix D” is a copy of the ESD.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree in the form presented without further notice.

37. If for any reason this Court should decline to approve this Consent

1 Decree in the form presented, this agreement is voidable at the sole discretion
2 of any party and the terms of the agreement may not be used as evidence in
3 any litigation between the Parties.

4 **XIX. SIGNATORIES/SERVICE**

5 38. Each undersigned representative of Settling Defendants to this
6 Consent Decree and the Assistant Attorney General for the Environment and
7 Natural Resources Division of the United States Department of Justice, or her
8 delegate, certifies that he or she is authorized to enter into the terms and
9 conditions of this Consent Decree and to execute and bind legally the party he
10 or she represents to this document.

11 39. Settling Defendants hereby agree not to oppose entry of this
12 Consent Decree by this Court or to challenge any provision of this Consent
13 Decree, unless the United States has notified Settling Defendants in writing
14 that it no longer supports entry of the Consent Decree.

15 40. Each Settling Defendant shall identify, on the attached signature
16 page, the name and address of an agent who is authorized to accept service of
17 process by mail on behalf of that Settling Defendant with respect to all matters
18 arising under or relating to this Consent Decree. Each Settling Defendant
19 hereby agrees to accept service in that manner and to waive the formal service
20 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and
21 any applicable local rules of this Court, including, but not limited to, service
22 of a summons. The Parties agree that Settling Defendants need not file an
23 answer to the complaint in this action unless or until the Court expressly
24 declines to enter this Consent Decree.

25 **XX. FINAL JUDGMENT**

26 41. Upon approval and entry of this Consent Decree by the Court, this
27 Consent Decree shall constitute the final judgment between and among the
28 United States and Settling Defendants. The Court finds that there is no just

1 reason for delay and therefore enters this judgment as a final judgment under
2 Fed. R. Civ. P. 54 and 58.

3

4 Dated: 12/12/05

Christina A. Snyde
United States District Judge

SCANNED

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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Aerojet-General Corporation and GenCorp, Inc.,
relating to the BPOU Area.

3
4 FOR THE UNITED STATES OF AMERICA

5
6
7 Dated: 9/16/05

Kelly A. Johnson

8 Kelly A. Johnson
9 Acting Assistant Attorney General
10 Environment and Natural Resources
11 Division
12 U.S. Department of Justice
13 Washington, D.C. 20530

14 Dated: 10-25-05

Robert D. Mullaney

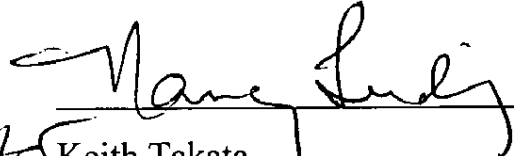
15 Robert D. Mullaney
16 Trial Attorney
17 Environmental Enforcement Section
18 Environment and Natural Resources
19 Division
20 U.S. Department of Justice
21 301 Howard Street, Suite 1050
22 San Francisco, California 94105
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SCANNED


1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Aerojet-General Corporation and GenCorp, Inc.,
3 relating to the BPOU Area.

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Dated: 9/23/05


Keith Takata
Director, Superfund Division
Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Dated: 9-27-05

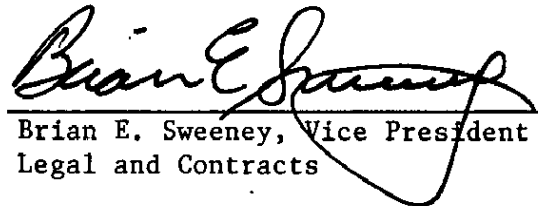

Lewis C. Maldonado
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
San Francisco, CA 94105

SCANNED

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Aerojet-General Corporation and GenCorp, Inc.,
3 relating to the BPOU Area.

4 FOR DEFENDANT AEROJET-GENERAL CORPORATION

5
6
7 Dated: 7/7/05

8 
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10
11
12 Brian E. Sweeney, Vice President
13 Legal and Contracts

14 Agent Authorized to Accept Service on Behalf of Above-signed Party:

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16 CT Corporation System
17 818 West Seventh Street
18 Los Angeles, CA 90017

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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Aerojet-General Corporation and GenCorp, Inc.,
3 relating to the BPOU Area.

4 FOR DEFENDANT GENCORP, INC.

5
6
7 Dated: July 7, 2005


Mark A. Whitney Vice President, Law

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9
10
11 Agent Authorized to Accept Service on Behalf of Above-signed Party:

12
13 CT Corporation System
14 818 West Seventh Street
15 Los Angeles, CA 90017

16 Tcl.: 213.627.8252
17 Fax:
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK

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